IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

CRP.No. 579 of 2002-D

RCA.93/2001 of D.C. & SESSIONS COURT, ERNAKULAM
RCP.146/1999 of I ADDL.M.C.,ERNAKULAM
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REVN. PETITIONER:
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1. MRS. K.S. MYMOON, W/O. LATE ABDUL KHADER, ALUNGAPARAMBIL HOUSE, CHITTOOR ROAD, ERNAKULAM, COCHIN - 682 035.

2. MR. A.A. SULAIMAN, S/O. LATE ABDUL KHADER, ALUNGAPARAMBIL HOUSE, CHITTOOR ROAD, ERNAKULAM, COCHIN - 682 035.

3. MRS.A.A. REHNA, D/O. LATE ABDUL KHADER, ALUNGAPARAMBIL HOUSE, CHITTOOR ROAD, ERNAKULAM, COCHIN - 682 035.

4. MR. A.A. SIYAD, S/O. LATE ABDUL KHADER, ALUNGAPARAMBIL HOUSE, CHITTOOR ROAD, ERNAKULAM, COCHIN - 682 035.

5. MR. A.A. SHAHID, S/O. LATE ABDUL KHADER, ALUNGAPARAMBIL HOUSE, CHITTOOR ROAD, ERNAKULAM, COCHIN - 682 035.

6. MR. A.A. SUHUD, S/O. LATE ABDUL KHADER, ALUNGAPARAMBIL HOUSE, CHITTOOR ROAD, ERNAKULAM, COCHIN - 682 035, REP. BY POWER OF ATTORNEY HOLDER MRS. K.S. MYMOON.

BY ADV. SRI.VARGHESE C KURIAKOSE
SRI.VARGHESE C.KURIAKOSE

RESPONDENTS:

THE DUNLOP INDIA LIMITED
'DUNLOP HOUSSE', 57 B MIRZA CHALIP STREET.

BY ADV. SRI.BABU KARUKAPADATH
SRI.JAGAN GEORGE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/12/2006, ALONG WITH CRP NO. 580 OF 2002 THE COURT ON 18-12-2006 PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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C.R.P.NOS.579 & 580 OF 2002

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Dated this the 18th Day of December 2006

ORDER

Udayabhanu,J.

The revision petitions are filed by the landlords challenging the common order in R.C.A.No.92/2001 of the Rent Control Appellate Authority over the common order in R.C.P.Nos.45/1999 and 146/1999 with respect to the premises involved. The petition scheduled building are building No.36/1134 of Cochin Corporation in 83 cents of land in Survey No.341/1 of Ernakulam Village (R.C.P.No.45/1999) and building No.36/1133 in 75 cents of land in Survey No.341/1 and 341/2 of Ernakulam Village (R.C.P.No.146/1999) owned by the mother and sons who are the landlords. The premises are adjacent and situated in the same compound and the tenant is the same. The eviction was sought under Section 11(2)(b), 11(3), 11(4)(i) and 11(4)(v) of the Kerala Buildings lease and Rent Control Act, 1965

(Act 2 of 1965) for short 'the Act'. The R.C.Ps.were tried jointly and the Rent Control court allowed the applications under Section 11(4)(v) and 11(3) of the Act. The Appellate Authority reversed the findings against which order the landlords have filed these revision petitions.

2. It is contended that the findings of the appellate authority are liable to be set aside as the same is not based on proper reasons and is the result of perverse appreciation of the facts involved and the application of misconceived notions of law.

3. It was found by the appellate authority that the pleading and evidence so far as the pleading under Section 11(3) of the Act were so vague, hazy and indefinite and hence the need put forward does not satisfy the test of bona fides. We find that the case set up is that the landlords jointly and individually required the buildings for their own use. It was not specified as to what is the specific purpose for which the premises were required. It is just a sweeping statement, i.e., a recital in support of the claim under Section 11(3) of the Act. It is seen that in the evidence of PW1 who is the 5th petitioner/landlord, the son of the first

petitioner who has deposed on behalf of the landlord nothing is mentioned about the nature of the business proposed to be started although he has stated that the premises are required for starting business. Evidently such a statement is hardly sufficient to satisfy the bona fides of the need envisaged under Section 11(3)of the Act. It would not be possible to properly dispute the bona fides of the alleged need unless the nature of the business or at least the bare details of the same is not mentioned if not in the pleadings at least in evidence. Only then the respondent would be able to expose the hollowness of the claim, if it is so. May be the premises is unsuitable for the particular business or that the petitioners may not be having the required skill or expertise or experience in the business sought to be started or that they may not be in a position to garner the required financial input to start and sustain the enterprise. If the nature of the business is kept in the dark neither the respondent can properly challenge the same nor can the court ascertain the bona fides of the need set up. The result of such concealment would result in gross prejudice to the tenant. Perhaps even if the landlord is not having experience or the

financial base he may be able to manage the same by employing skilled persons or by availing loan etc.from financial institutions. He may also have ideas to make necessary modifications to the premises to instal the proposed business. But all these have to be explained before the court. Only then the respondent/tenant can contest the same and the court can enter into a finding as to the bona fides of the the need set up. In the instant case, as rightly held by the appellate authority the petitioners/landlords have not revealed even the bare minimum required so that the court can have an objective finding as to the bona fides of the need set up. Hence, we find that there is nothing illegal or improper in the finding of the appellate authority with respect to the claim set up under Section 11(3) of the Act.

4. So far as the ground under Section 11(4)(v) is concerned, the statute envisages that the tenant should cease to occupy the building continuously for six months without reasonable cause. It is seen that in the instant case, the petitions were filed on 19-2-1999 and 4-9-1999 respectively. Hence, as per the statutory provision, the cessation of occupation

should commence from 20-8-1998 and 5-3-1999 respectively. A commission was taken out and the report is an ex parte one. The Commissioner was not examined nor was the notice of inspection given to the tenant. Hence, reliance placed on Ext.C1 report of the Commissioner by the Rent Control Court was rightly deprecated by the appellate authority. It was found that the Commissioner was not examined.

5. Ext.C1(a)notice dated 2-8-1999 was seen affixed on the premises by the respondent/tenant company to the effect that all operations of the unit of the company in the premises is suspended with effect from 2-8-1999. Ext.C1(a) is as follows:

> "Suspensions of Work at MRPD.COCHIN
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> Employees are fully aware that since suspension of work at Sahaganj Factory with effect from 7-2-98 and suspension of work at Ambattur Factory with effect from 9-2-98, there is no business activity in the aforesaid establishment at Cochin and in fact the establishment remains defunct and idly without having any activity whatsoever. Employees are also aware that the company is also passing

through extreme financial crisis and has been declared a Sick Company and has been referred to the BIFR. Despite extreme financial crunch, the management so long kept this unit open and alive for operation but now the management is convinced that there is no prospect of running this company immediately.

The management, having considered the entire situation, is of a definite view that keeping the establishment opened in such an idle state will only cause further escalation of accumulated loss and the management has no money to pay even the wages etc. The management has, therefore, decided to formally declare suspension of all operations of this unit with immediate effect from 2-8-99. Accordingly, all the employees are informed not to enter the unit with effect from 2-8-99 the unit being under suspension.

In the circumstances, the management has no alternative but to suspend the operation of this unit with immediate effect and all the employees will not be entitled to any salary and wages till continuation of the suspension work."

It was found by the appellate authority as evident from Ext.C1

(a) that the unit was kept open and alive till 2-8-1999. Ext.C1 (a) will show that the employees were attending the offices in the petition schedule premises till 2-8-1999. Hence, the appellate authority has rightly found that there can be no presumption that prior to 2-8-1999, the tenant had ceased to occupy the premises. RW1, the official of the respondent Company has also testified with respect to the genuineness of the contents in Ext.C1 (a)notice.

In the circumstances, we find no reason to disturb the findings of the appellate authority on both the grounds. In the result, the revision petitions are dismissed.

Sd/-
K.A.ABDUL GAFOOR
JUDGE

Sd/-

K.R.UDAYABHANU,
JUDGE

ks.

K.R.UDAYABHANU, J

C.R.P.NOS.579 & 580/2002

ORDER

18-12-2006